

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 WACO DIVISION

3 SABLE NETWORKS, INC.,) Docket No. WA 20-CA-569 ADA
4 SABLE IP, LLC)
5 vs.) Waco, Texas
6 DELL TECHNOLOGIES, INC.,)
7 DELL, INC., EMC)
8 CORPORATION) September 24, 2020

8 TRANSCRIPT OF TELEPHONIC SCHEDULING CONFERENCE
9 BEFORE THE HONORABLE ALAN D. ALBRIGHT

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25 Proceedings reported by computerized stenography,
transcript produced by computer-aided transcription.

14:46:29 1 THE COURT: Suzanne, do you have the style of the
14:46:30 2 other case?

14:46:31 3 THE CLERK: Yes, sir.

14:46:31 4 THE COURT: Okay. If you would call the other
14:46:33 5 case, please.

14:46:34 6 THE CLERK: Sure.

14:46:35 7 Telephonic scheduling conference in Civil Action
14:46:38 8 6:20-CV-569, styled, Sable Networks, Incorporated and
14:46:45 9 Sable IP, LLC vs. Dell Technologies, Incorporated, Dell,
14:46:49 10 Incorporated and EMC Corporation.

14:46:51 11 THE COURT: Okeydokey. I am happy to have you
14:46:56 12 all announce again so it's in the same part of the
14:47:00 13 transcript as Suzanne calling the case, please.

14:47:06 14 MR. HIPSKIND: Thank you, your Honor.

14:47:07 15 This is Daniel Hipskind on behalf of Plaintiff
14:47:11 16 Sable Networks, Inc. and Sable IP, LLC. And I'm joined by
14:47:14 17 my co-counsel, Dorian Berger and Elizabeth DeRieux. And
14:47:17 18 we have our client representative, Brooks Borchers, on the
14:47:19 19 line, as well.

14:47:20 20 THE COURT: I always appreciate it when clients
14:47:23 21 or inhouse counsel take the time to attend these hearings.
14:47:26 22 So thank you very much for attending.

14:47:28 23 And for Dell?

14:47:31 24 MR. NEWTON: For Dell, your Honor, it's Michael
14:47:35 25 Newton from Alston & Bird. I have my colleagues, Brady

14:47:36 1 Cox, Lauren Griffin and Emily Welch. And then, we, too,
14:47:40 2 have client representatives Tom Brown and Rachael Shen.

14:47:43 3 THE COURT: Okeydokey. Is Tom Brown, is he
14:47:49 4 someone who used to work at a law firm?

14:47:52 5 MR. NEWTON: I believe that is the case.

14:47:54 6 THE COURT: And was that law firm Fish?

14:47:56 7 MR. NEWTON: I believe that's the case, as well.

14:47:58 8 THE COURT: Well, then, I know Mr. Brown. Mr.
14:48:01 9 Brown, I don't think you've been in front of me before,
14:48:02 10 but welcome. I hope you're doing well.

14:48:06 11 MR. BROWN: Thank you, your Honor. Good to hear
14:48:08 12 from you.

14:48:08 13 THE COURT: And just for the record, I don't
14:48:10 14 think I've talked to Mr. Brown in a decade, but glad to
14:48:14 15 hear his voice.

14:48:15 16 So if I could hear from counsel as to why -- what
14:48:21 17 issues you might have to have me resolve.

14:48:26 18 MR. HIPSKIND: Thank you, your Honor. This is
14:48:27 19 Dan Hipkind for the plaintiffs.

14:48:28 20 We don't have any issues. I think we're open to
14:48:33 21 a Markman date and a trial date from the Court, and then,
14:48:36 22 we can work with Dell on the proposed scheduling order.
14:48:39 23 But other than requesting those two dates, we don't have
14:48:42 24 any specific issues to raise.

14:48:44 25 THE COURT: And for Dell?

14:48:45 1 MR. NEWTON: Your Honor, Mike Newton.

14:48:47 2 Three things quickly. Protective order, we've
14:48:50 3 exchanged. We're working through that. We'll get that
14:48:52 4 filed, hopefully pretty quickly, a joint order. We
14:48:55 5 talked, plaintiffs' counsel and I, about moving to
14:48:59 6 transfer. I understand from Tom Brown in another case
14:49:03 7 that he has with you that you would now like to see
14:49:06 8 opposed motions filed, even if the parties agree.

14:49:08 9 THE COURT: Correct.

14:49:10 10 MR. NEWTON: Okay. So I understand we have two
14:49:12 11 weeks to do that from today. So we'll get that on file.

14:49:15 12 And then, the third thing is just to want to take
14:49:17 13 your temperature, if you will, on a Markman proposal I
14:49:19 14 made to plaintiff. I don't think they want to go down
14:49:22 15 this path. They want to stick with the default schedule.
14:49:24 16 But as you may know, there's a number of these Sable
14:49:29 17 cases: One against Cisco. They were filed, I think, two
14:49:31 18 months ahead of the Dell case. Another case against
14:49:35 19 Juniper maybe filed ten or so days before the Dell case.
14:49:39 20 You have a Markman hearing set for Cisco in -- I believe
14:49:43 21 it's January 14th of 2021. And for the Juniper case, you
14:49:48 22 set a hearing for February 19th, 2021.

14:49:52 23 Our proposal to the other side was let the Cisco
14:49:56 24 case go and then, consolidate the Dell and Juniper
14:50:02 25 Markmans and move it back maybe three weeks from the Dell

1 date, which would be mid-March; and that way, we see
2 what's going to happen in Cisco and we don't rebrief terms
3 that don't need to be briefed there. And there's not a
4 complete overlap of patents between the Cisco case, the
5 Dell case and the Juniper, but there's enough overlap that
6 it might make sense to see how you come out in -- at least
7 in your tentative in January of '21, and then, start our
8 briefing just, you know, a week after that and not waste
9 the Court's time.

10 THE COURT: Let me ask Mr. Hipskind this. Would
11 there be any harm to you if I consolidated the two that
12 are currently set and either kept in February or early
13 March -- my first concern is just, is there any reason why
14 we couldn't consolidate those Markmans?

15 MR. NEWTON: I don't have a problem -- you know,
16 Cisco would be a bit early, but you could consolidate with
17 Juniper, I'd like to move it back to the Dell date, which
18 I said I think comes out on March 11th. The only thing
19 that we were proposing is maybe so we don't double brief
20 things that we don't need to brief and see what you do in
21 the Cisco Markman in your tentative --

22 THE COURT: Right.

23 MR. NEWTON: -- which would, again, push the
24 briefing about three weeks.

25 THE COURT: That makes sense to me. Is there any

14:51:17 1 opposition to it from anyone?

14:51:20 2 MR. HIPSKIND: Yes, your Honor. This is Dan
14:51:22 3 Hipskind for the plaintiffs.

14:51:22 4 I think our only opposition, we're not opposed to
14:51:26 5 the consolidating Dell and Juniper and do a common
14:51:31 6 Markman. It's just the timing that we would request that
14:51:33 7 we work with us -- with Dell on a schedule where we could
14:51:37 8 keep our February 19th Markman hearing in the Juniper
14:51:41 9 case.

14:51:45 10 MR. NEWTON: Your Honor, this is Mike Newton, if
14:51:47 11 I may.

14:51:47 12 That kind of defeats the purpose of trying to
14:51:50 13 consolidate them for the purpose of not redoing what's
14:51:52 14 done in Cisco because if we end up briefing the same terms
14:51:55 15 because we don't know how it's going to come out, in some
14:51:57 16 ways, we waste a lot of space in the briefing.

14:52:00 17 THE COURT: Yeah. I think, Mr. Hipskind, what
14:52:03 18 works best for -- you know, I know that part of the reason
14:52:08 19 -- I would think part of the reason you want not to push
14:52:12 20 any of this stuff too far back is because of its impact on
14:52:16 21 when we'll -- I'll set the trial. But given it sounds to
14:52:22 22 me like there are going to be three cases that I'm dealing
14:52:26 23 with -- and, Mr. Hipskind, where are the other cases
14:52:34 24 venued? Are they in Waco or Austin?

14:52:39 25 MR. HIPSKIND: All Western District cases are in

14:52:40 1 Waco.

14:52:41 2 THE COURT: Okay. So hold on one second.

14:53:16 3 What we're going to do is, we'll get you today a
14:53:18 4 date in March. And part of the reason I'm doing that, Mr.
14:53:21 5 Hipskind, I know you're concerned about pushing it back
14:53:24 6 even a month, but we're going to have to set three trials,
14:53:27 7 and so -- and I want to make sure that Dell doesn't -- it
14:53:33 8 isn't unfair to Dell when we set their trials.

14:53:35 9 So I'll have a better sense if we -- if we have
14:53:40 10 the Markman in March and we're doing other things, I will
14:53:44 11 have a better sense of how quickly I can set the series of
14:53:49 12 trials. But I can assure you that we'll keep this on --
14:53:54 13 you're not going to lose much time in terms of when we get
14:53:58 14 to trial on any of these in my court.

14:54:01 15 So we will get back -- is there anything else,
14:54:04 16 Mr. Newton, you wanted to take up?

14:54:06 17 MR. NEWTON: No, your Honor.

14:54:08 18 THE COURT: And, Mr. Hipskind, is there anything
14:54:10 19 else you wanted to take up?

14:54:12 20 MR. HIPSKIND: Yes, your Honor. I just wanted to
14:54:13 21 make sure I was clear on what was happening with the
14:54:15 22 Markman.

14:54:16 23 THE COURT: Okay.

14:54:17 24 MR. HIPSKIND: Is that going to be just a common
14:54:18 25 Markman between the Dell case and the Juniper case in

14:54:22 1 March?

14:54:23 2 THE COURT: I don't -- is there any reason why we
14:54:27 3 wouldn't make -- why we wouldn't have just one Markman --
14:54:31 4 is there enough -- I don't know enough off the top of my
14:54:34 5 head.

14:54:35 6 Is there sufficient overlap in the patents that
14:54:37 7 are asserted to make it -- to make sense that one Markman
14:54:41 8 that includes all of the defendants, or does it make sense
14:54:45 9 to keep them at least split up because of the difference
14:54:50 10 of patents that are asserted? You'll have to help me with
14:54:52 11 that.

14:54:53 12 MR. HIPSKIND: Yes, your Honor.

14:54:54 13 I think with respect to -- this is Dan Hipskind
14:54:59 14 still. I think it makes sense to have Juniper and Dell
14:55:01 15 because we have three of the four asserted patents in the
14:55:04 16 Dell, also in the Juniper case. But we have in my opinion
14:55:08 17 sufficient, you know, patents that are not overlapping
14:55:10 18 with Cisco to still move forward with that January 14th
14:55:17 19 Markman hearing.

14:55:19 20 THE COURT: Mr. Newton, do you have any problem
14:55:20 21 with the Cisco Markman moving forward? Do you have any
14:55:23 22 suggestions about that?

14:55:24 23 MR. NEWTON: No, your Honor.

14:55:25 24 I think that is the right way because the overlap
14:55:27 25 is a little bit strange, and so, I still -- I think we

14:55:29 1 would benefit, and Juniper probably more than Dell, in
14:55:33 2 seeing what happens in the Cisco Markman. And then, like
14:55:36 3 Mr. Hipskind said, there are three patents, four asserted
14:55:40 4 against Dell that overlap with Juniper. And I think just
14:55:44 5 to give you the numbers, Cisco has six patents, Juniper
14:55:47 6 six patents, between those two, there's four patents
14:55:50 7 overlapping. So it's kind of a weird mix, if you will.

14:55:53 8 THE COURT: Okay. So -- and I'm going to say
14:55:55 9 this and one of you scream if I screw this up. Actually,
14:55:59 10 I think I've got it right. It's been a long day. The
14:56:04 11 Cisco Markman is set in January. That's obviously set a
14:56:11 12 long time ago, and neither Mr. Hipskind nor Mr. Newton
14:56:14 13 have any issue with me maintaining the Cisco Markman on
14:56:17 14 whatever date it is in January.

14:56:19 15 The Juniper Markman is currently set in February.
14:56:23 16 We are going to move that back roughly three weeks or
14:56:26 17 more. We'll get you a date in March. And then, am I
14:56:30 18 hearing from -- and then, Mr. Newton, you're saying that
14:56:34 19 what we -- you're not inviting yourself to be part of that
14:56:37 20 Markman, are you? You just want to see what was briefed
14:56:40 21 in it? Or did you want to be part of that Markman, as
14:56:42 22 well?

14:56:43 23 MR. NEWTON: No. I don't want to be part of that
14:56:45 24 Markman. I just want to see how you come out so I don't
14:56:48 25 rebrief terms --

14:56:49 1 THE COURT: Got it.

14:56:50 2 MR. NEWTON: -- you know, you've already come
14:56:50 3 out. Or if I have to preserve some for appeal, I do it,
14:56:54 4 but I don't waste a lot of space.

14:56:56 5 THE COURT: Perfect.

14:56:57 6 So I will move the Juniper back three weeks and
14:57:00 7 then, we need to set -- and we'll get a date. We'll get a
14:57:03 8 new date for the Juniper that we'll get to you. And then,
14:57:08 9 we've not given -- do you all have a suggestion for when
14:57:11 10 you would want the Dell Markman to take place, which month
14:57:15 11 it would be?

14:57:17 12 MR. NEWTON: I was thinking like April 2nd. So
14:57:19 13 I'd like to do the Juniper -- the Juniper Markman and Dell
14:57:22 14 together, but more like April 2nd, and the reason, that
14:57:24 15 would be moving Dell back three weeks, and it allows you
14:57:27 16 to move the opening briefs so it's due a week after the
14:57:30 17 Cisco Markman. And so, the thinking there is, I see what
14:57:34 18 you do at the Cisco Markman with your tentative, but have
14:57:38 19 a good idea where you're coming out, then we have a week
14:57:40 20 to noodle on our brief and say, hey, let's drop X, Y and Z
14:57:44 21 terms and it's a lot more, I don't know, stratified or
14:57:48 22 simple as far as what we brief.

14:57:50 23 THE COURT: So the Newton suggestion is April 2nd
14:57:53 24 for both the Juniper and the Dell Markman to take place?

14:57:57 25 MR. NEWTON: That's correct.

14:57:57 1 THE COURT: Okay. Mr. Hipskind.

14:58:00 2 MR. HIPSKIND: Your Honor, I don't have an
14:58:02 3 objection to that other than, you know, we'd like to move
14:58:05 4 as soon as we can.

14:58:06 5 THE COURT: Okay. Well, again, you can assume --
14:58:13 6 and you all can assume that the trial and I'll -- you need
14:58:19 7 to make sure either to let Juniper know or we will -- I'm
14:58:22 8 not going to give you a trial date for either Juniper or
14:58:25 9 Dell right now. But, you know, just more or less, it will
14:58:30 10 be sometime between April and June of the following year,
14:58:37 11 2022. So it's not going to im -- Mr. Hipskind, it's going
14:58:42 12 to impact it by no more than a month.

14:58:46 13 So the --

14:58:47 14 MR. HIPSKIND: Your Honor, to jump in, we
14:58:49 15 currently have a trial date in the Juniper case, so I
14:58:54 16 guess, can we keep it? Or are you saying the next --

14:58:57 17 THE COURT: And I don't want to do this without
14:59:01 18 Juniper being involved, but when is the Juniper trial set?

14:59:05 19 MR. HIPSKIND: February the 28th, 2022.

14:59:08 20 THE COURT: I think there's -- I think there's a
14:59:10 21 possibility -- I'll have to look. Well, let me say this.
14:59:16 22 Ordinarily this works out pretty well when I wing it like
14:59:18 23 I'm doing right now. I don't -- let me just make sure --
14:59:25 24 let me do this. Let's reset this hearing for a week. I
14:59:32 25 really do want to check with my law clerk. I don't want

14:59:37 1 to -- I can't move the Juniper date without impacting the
14:59:42 2 trial date. And I don't know why we set a trial date in
14:59:45 3 February, if there's some reason or not.

14:59:48 4 So before I move the Juniper date, I understand
14:59:52 5 why it might benefit Dell, but it may not be possible for
14:59:54 6 me to move the Juniper Markman date because I want to give
14:59:59 7 Juniper a full year between Markman and trial. So let me
15:00:07 8 -- why don't you all just stay on the line. Let me go
15:00:09 9 check with my clerk and see why it is that we set the
15:00:13 10 February trial date for Juniper and whether I can move
15:00:17 11 that or not. Just hold on one second.

15:04:27 12 Gentlemen, here's -- back on the record. Here's
15:04:29 13 what we're going to do. It occurs to me that were I
15:04:34 14 representing Juniper, I would not want to get a call
15:04:37 15 saying that my life was decided while I wasn't invited.
15:04:41 16 So what we're going to do, I've got a Markman,
15:04:46 17 unfortunately, tomorrow that will, I think, take all day
15:04:49 18 and I'm worried about setting a CMC. So we'll reset this
15:04:55 19 hearing for Monday, Tuesday latest, but hopefully Monday,
15:04:59 20 and we'll include the lawyers for Juniper because I
15:05:03 21 understand now all the -- where all the moving parts are,
15:05:07 22 and I want Juniper's counsel to be as involved as anybody
15:05:10 23 else if we're affecting their litigation, as well.

15:05:17 24 But I appreciate having this hearing because I
15:05:20 25 understand what the issues are now. And I think Dell's

15:05:24 1 suggestion is probably well taken. I want to make sure
15:05:28 2 that we're as efficient as possible.

15:05:31 3 So is there anything else that's burning that we
15:05:35 4 need to take, before I hang up, that you all would like to
15:05:39 5 discuss?

15:05:41 6 MR. HIPSKIND: Your Honor, this is Dan Hipkind.

15:05:43 7 My -- I guess my question, given what we're
15:05:47 8 planning for next week, we have a proposed scheduling
15:05:50 9 order due in the Juniper case on Friday.

15:05:54 10 Should we hold off on that and I can convey to
15:05:58 11 opposing counsel on what we --

15:05:59 12 THE COURT: Yea.

15:06:00 13 MR. HIPSKIND: -- revisiting the schedule next
15:06:01 14 week?

15:06:02 15 THE COURT: Correct. Please do. Yes. And that
15:06:06 16 they will be involved in that consideration.

15:06:11 17 You also are certainly free, or opposing counsel,
15:06:14 18 whoever is, is to explain to them, you know, we're trying
15:06:18 19 to jigger the schedule to best accommodate everybody. And
15:06:24 20 I want to make sure that Juniper gets an input for what's
15:06:31 21 best for them.

15:06:32 22 MR. HIPSKIND: Yes, your Honor. Will do. And I
15:06:35 23 have nothing else for the plaintiffs.

15:06:36 24 THE COURT: Anything for Dell?

15:06:38 25 MR. NEWTON: Nothing else, your Honor.

15:06:39 1 THE COURT: Okay. Thank you so much. Be safe
15:06:40 2 out there.

15:06:41 3 MR. NEWTON: Thank you. Bye.

15:06:42 4 MR. HIPSKIND: Thank you, your Honor.

5 (Proceedings concluded.)

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UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Certified Realtime Reporter,
Registered Merit Reporter, in my capacity as Official
Court Reporter of the United States District Court,
Western District of Texas, do certify that the foregoing
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I certify that the transcript fees and format comply
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WITNESS MY OFFICIAL HAND this the 12th day of October,
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/s/Lily I. Reznik
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